IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR.JUSTICE M.RAMACHANDRAN

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

W.A.No.80 of 2007

AGAINST THE JUDGEMENT IN W.P.(C).28206/2006 DATED 03/11/2006
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APPELLANTS: RESPONDENTS 1 TO 4:-
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1. THALASSERY MUNICIPALITY,
   REPRESENTED BY ITS SECRETARY.

2. THE SECRETARY,
   THALASSERY MUNICIPALITY.

3. THE MUNICIPAL ENGINEER,
   THALASSERY MUNICIPALITY.

4. THE TOWN PLANNING OFFICER,
   THALASSERY MUNICIPALITY.

BY ADV. SRI.I.V.PRAMOD.

RESPONDENTS: PETITIONER & 5TH RESPONDENT
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1. P.KHALID,
   SHAAG, P.O.CHIRAKKARA, THALASSERY,
   KANNUR.

2. STATE, REPRESENTED BY THE SECRETARY TO GOVERNMENT,
   REPRESENTED OF LOCAL SELF GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM.

R1 BY GOVERNMENT PLEADER SRI.T.B.HOOD.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 16/01/2007, THE COURT ON 23/01/2007 DELIVERED THE FOLLOWING:

V.K.Bali,C.J. & M.Ramachandran,J.

W.A.No.80 of 2007 & C.M.Appln.No.46 of 2007

Dated, this the 23rd day of January, 2007

JUDGMENT

V.K.Bali,C.J.

Delay condoned.

2. Thalassery Municipality, respondent in the original lis, has filed this Writ Appeal challenging the order dated 3rd November, 2006 passed by the learned Single Judge recorded in W.P.(C). No.28206 of 2006, by which order Exhibit P2 was quashed and a direction was given to the appellants-Municipality to reconsider the petitioner's application for building permit and pass appropriate orders thereon at the earliest, uninfluenced by any proposal to acquire land for road widening.

3. The prayer of the petitioner contained in the application for granting approval to the plan and for the issue of permit was rejected on the sole ground that the land belonging to the petitioner was required for road widening. It is not disputed before the learned Single Judge nor disputed before us that if the road is widened the property of the petitioner shall be acquired under the provisions of the Land Acquisition Act, 1894, hereinafter referred to as 'Act of 1894'. It was also conceded position that no notification under Section 4 of the Act of 1894 was issued so far proposing to acquire the property of the petitioner. Following the dictum of this Court in **Padmini** v. **State of**

Kerala [1993 (3) KLT 465], the impugned order was quashed. It was, however, made clear that the quashing of Exhibit P2 would be without prejudice to the right of the Municipality to acquire the land and the building constructed by the petitioner in accordance with the provisions of the Act of 1894 for genuine public purposes. There cannot be any exception whatsoever to the view taken by the learned Single Judge, besides based on a judicial precedent it is also just and equitable one. When property is to be acquired under the provisions of the Act of 1894, there is no embargo for acquiring the construction in the land, for which, of course, adequate compensation has to be paid. The applications of citizens seeking permission for construction in their own land cannot be refused in contemplation of acquisition proceedings.

There is no merit in this appeal, which we hereby dismiss in limine.

V.K.Bali
Chief Justice

M.Ramachandran
Judge

vku/-